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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Motor Vehicle Dealer Board
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC22-_____
<b>Regulation title</b>	Motor Vehicle Dealer Dealer-operator Training Regulations
<b>Action title</b>	New regulations, establishing training requirements for motor vehicle dealer dealer-operators and requirements for those offering the training.
<b>Document preparation date</b>	September 6, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

At its July meeting, the Motor Vehicle Dealer Board decided that the agency should explore the possibility of requiring future, first time applicants for a dealer-operator's certificate of qualification to satisfactorily complete a course of study as part of the qualification process.

A "dealer-operator" is defined as "the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business." All licensed motor vehicle dealers are required to designate a "dealer-operator".

The sale of a motor vehicle is a complex transaction. The Board believes that both dealers and consumers would benefit if the person in charge of a dealership was better trained to handle the intricacies of a sale and running this type of business.

There are a myriad of federal and state laws and regulations that govern the sale of a motor vehicle. The goal of requiring training is to upgrade the professionalism and knowledge of the dealer-operator. In this way, both dealers and consumers will be better served.

The Board believes that training can best be delivered through third parties. Third parties could include private enterprise, trade associations and community colleges.

Currently, one must pass an exam to earn a dealer-operator’s Certificate of Qualification. The exam can be taken on an automated testing machine located at any DMV Customer Service Center. The Motor Vehicle Dealer Board compensates DMV for providing this service. Study guides for taking the test are available from the Board or can be downloaded from the Board’s WEB site. A practice test is also available on DMV’s WEB site and a hot link on the Motor Vehicle Dealer Board’s WEB site takes individuals from the Board’s WEB site to the practice test.

In exploring this idea, the Motor Vehicle Dealer Board will follow the Administrative Process Act for adopting Regulations. This process provides ample opportunity for input from the public and anyone else interested in participating.

If regulations are adopted, the Board envisions that they would address two distinct topics: 1). Criteria to certify third parties to conduct the training. 2). Outline of the curriculum for the training.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

**§ 46.2-1506.1. Additional training.**

The Board may promulgate regulations specifying additional training or conditions for individuals seeking certification, licensure, or renewal of certificates or licenses.

Also,:

**§ 46.2-1503.4. General powers and duties of Board.**

The powers and duties of the Board shall include, but not be limited to the following:

1. To establish the qualifications of applicants for certification or licensure, provided that all qualifications shall be necessary to ensure competence and integrity.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure, including the preparation, administration and grading of examinations.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

Through the “Notice of Intended Regulatory Action”, which will include notifying interested parties, the Board will be able to better gage the need for regulations and if they are needed, the best way to offer training and develop curriculum.

The following factors were cited in explaining why the Board believes it would be in the best interest of the dealer community and consumers to require this type of training:

- Merchandising motor vehicles to the public is overseen by many state and federal laws and regulations.

- It is imperative that the prospective motor vehicle dealer be aware of these laws and regulations and the documents necessary to comply be completed correctly.
- That mistakes and omissions not only adversely impact the dealer, but may also cause significant problems for the consumer.

In deciding to explore the concept of mandatory training for dealer-operators, the consensus of the Board was that current dealer-operators and those seeking a dealer-operator license for a franchise dealer would be exempt from the training requirements. (Franchise dealer-operators would be exempt since manufacturers require such training.) It is believed that by providing these two exemptions, potential, major opposition will not be an issue.

An issue that will need to be addressed is providing adequate opportunities for individuals to enroll and take the training class.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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Currently, dealer-operators must take an exam before they can become qualified. In Fiscal year, 2004, the test was administered 713 times. The test was passed 484 times and failed 173 times for a “failed” rate of over 24 percent. Fifty-six times, the individual taking the test failed to complete the test. If you combine the number of those that failed with those that did not complete the test you get a failure rate of over 32 percent.

By way of comparison, in Fiscal year 1998, the test was administered 615 times, 57 failed and 43 failed to complete the test for a total failure rate of just over 16 percent! In just six years, the failure rate has doubled!

From these statistics and subject observations of dealers of the mistakes and problems that Board staff and consumers encounter, it appears that the alternative currently provided: A study guide and no mandatory training is not as effective as the Board would like to see.

Finally, a central goal of the Motor Vehicle Dealer Board is to enhance the image and professionalism of the automobile dealer sales industry. The Board believes that similar to many other professions, mandatory training and certification is needed to better educate those that have chosen to open and/or run a motor vehicle dealership.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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None

### Periodic review

*If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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Commenter	Comment	Agency response

**Not Applicable**